

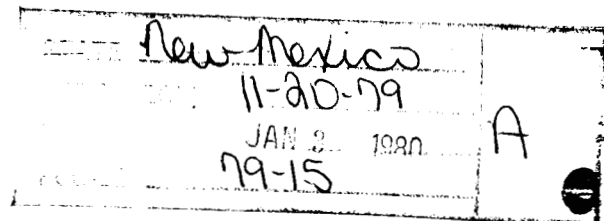
STATE PLAN UNDER TITLE XIX  
OF THE SOCIAL SECURITY ACT

STATE OF NEW MEXICO

Citations of State Laws, Rules, Regulations and Policy Statements  
Providing Assurance of Conformity to Federal Merit System Standards

Article 9 of New Mexico Statutes Annotated 1978 Comp. contains this State's Personnel Act. As assurance of New Mexico's conformity to Federal merit system standards, Article 9 is reproduced here in its entirety as Attachment 5.1-A to the New Mexico State Plan for Medical Assistance under Title XIX.

**ARTICLE 9**  
**Personnel Act**



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**10-9-1. Short title.**

This act may be cited as the "Personnel Act."

**History:** 1963 Comp., § 5-4-28, enacted by Laws 1961, ch. 240, § 1.

**Appropriation.** — Laws 1971, ch. 319, § 1, appropriates \$230,500 from the general fund to the department of finance and administration for use during the sixth fiscal year for the purpose of raising salaries of employees in the classified service to a minimum of \$3.00 a month.

**Medical center covered by act.** — The Los Lunas state hospital and training school (now the Los Lunas medical center) is a state institution and it falls within the category of departments covered by the Personnel Act. 1961-62 Op. Att'y Gen. No. 61-80.

**Meaning of "this act".** — The term "this act" refers to Laws 1961, ch. 240, the provisions of which are pres-



ently compiled as 10-9-1 to 10-9-4, 10-9-8 to 10-9-10, 10-9-12, 10-9-13 and 10-9-15 to 10-9-25 NMSA 1978.

**So in state land office.** — The state land office is presently subject to the Personnel Act. 1969 Op. Att'y Gen. No. 69-99.

**And agencies already with merit systems.** — Nothing in the Personnel Act indicates that agencies that

have adopted merit systems are thereby exempted from the operation of the Personnel Act (decided under former law). 1959-60 Op. Att'y Gen. No. 60-229.

**Law review.** — For note, "Public Labor Disputes — A Suggested Approach for New Mexico," see 1 N.M. L. Rev. 281 (1971).

### 10-9-2. Purpose of act; enactment under constitution.

The purpose of the Personnel Act is to establish for New Mexico a system of personnel administration based solely on qualification and ability, which will provide greater economy and efficiency in the management of state affairs. The Personnel Act is enacted under and pursuant to the provisions of Article 7, Section 2 of the constitution of New Mexico, as amended.

**History:** 1953 Comp., § 5-4-29, enacted by Laws 1961, ch. 240, § 2; 1963, ch. 200, § 1.

**Personnel Act.** — See 10-9-1 NMSA 1978 and notes thereto.

**Legislative intent.** — In enacting the Personnel Act it was the desire of the legislature to insulate in some manner the paid state employee from the whims and caprice of the political election so as to provide continuity of government in a changing environment. 1963-64 Op. Att'y Gen. No. 64-7.

**Ability of government to be enhanced.** — The legislature wished to enhance the ability of government by insuring that the "sifting system" of the public election be replaced by objective examinations to assure that competent citizens are initially selected for the "insulated" positions. 1963-64 Op. Att'y Gen. No. 64-7.

**Merit system provided.** — The Personnel Act provides for a merit system, not a seniority system. 1965 Op. Att'y Gen. No. 65-78A.

C.J.S. reference. — 81A C.J.S. States § 86.

### 10-9-3. Definitions.

As used in the Personnel Act:

- A. "director" means the personnel director;
- B. "board" means the personnel board;
- C. "service" means the state personnel service created by the Personnel Act, and includes all positions covered by the Personnel Act;
- D. "position" means any state office, job, or position of employment;
- E. "employer" means any authority having power to fill positions, in an agency;
- F. "agency" means any state department, bureau, division, branch or administrative group which is under the same employer;
- G. "class" means a group of positions similar enough in powers and responsibilities that they can be covered by the same qualifications and rate of pay;
- H. "test" means a test of the qualifications, fitness and ability, and includes tests that are written, oral, physical or in the form of a demonstration of skill or any combination thereof;
- I. "employee" means a person in a position in the service who has completed his probationary period; and
- J. "probationer" means a person in a position in the service who is still in the probationary period for that position.

**History:** 1953 Comp., § 5-4-30, enacted by Laws 1961, ch. 240, § 3.

**Personnel Act.** — See 10-9-1 NMSA 1978 and notes thereto.

**Effect on person contemplated by 28-15-1 NMSA 1978.** — If a person contemplated by 28-15-1 NMSA 1978 has gained the status of an "employee" as that term is defined by this section and the personnel board rules, he will have additional rights under the state personnel board rules that a "probationer" would not. 1969 Op. Att'y Gen. No. 69-108.

**Where employees not entitled to participate.** — Since the employees of an intercommunity gas association worked for a corporation controlled by three separate municipalities rather than for the state itself, such employees were not entitled to participate under the provisions of the State Personnel Act. 1966 Op. Att'y Gen. No. 66-7.

C.J.S. reference. — 81A C.J.S. States § 86.

### 10-9-4. Coverage of service.

The Personnel Act and the service cover all state positions except:



- A. officials elected by popular vote or appointed to fill vacancies in elective offices;
- B. members of boards and commissions and heads of agencies appointed by the governor;
- C. heads of agencies appointed by boards or commissions;
- D. directors of department divisions;
- E. those in educational institutions and in public schools;
- F. those employed by state institutions and by state agencies providing educational programs and who are required to hold valid certificates as certified school instructors as defined in Section 22-1-2 NMSA 1978 issued by the state board of education;
- G. those in the governor's office;
- H. those in the state militia or state police;
- I. those in the judicial branch of government;
- J. those in the legislative branch of government;
- K. not more than two assistants and one secretary in the office of each official listed in Subsections A, B and C of this section, excluding members of boards and commissions in Subsection B of this section;
- L. those of a professional or scientific nature which are temporary in nature;
- M. those filled by patients or inmates in charitable, penal or correctional institutions;
- N. state employees, if the personnel board, in its discretion, decides that the position is one of policy making; and
- O. disadvantaged youth under twenty-two years of age regularly enrolled or to be enrolled in a secondary educational institution approved by the state board of education or in an accredited state institution of advanced learning or vocational training and who are to be employed for not more than seven hundred twenty hours during any calendar year.

(1) The term "disadvantaged youth" shall be defined for purposes of this exemption by regulation duly promulgated by the board.

(2) The board shall:

- (a) require that all of the above criteria have been met;
- (b) establish employment lists for the certification of the highest standing candidates to the prospective employers; and
- (c) establish the pay rates for such employees.

**History:** 1953 Comp., § 5-4-31, enacted by Laws 1961, ch. 240, § 4; 1963, ch. 200, § 2; 1967, ch. 181, § 1; 1969, ch. 126, § 1; 1975, ch. 182, § 1; 1977, ch. 247, § 45.

The 1977 amendment added present Subsections D and E, redesignated former Subsections D through M as "F" through "O", deleted "New Mexico state personnel" preceding "board" near the end of Subsection O(1) and deleted "state personnel" preceding "board" in the introductory language of Subsection O(2).

**Personnel Act.** — See 10-9-1 NMSA 1978 and notes thereto.

**Due process requirements.** — New Mexico has recognized that nonpolicymaking officials are entitled to due process before they may be dismissed, but members of boards and commissions and heads of agencies appointed by the governor are not entitled to the State Personnel Act's notice and hearing requirements preceding dismissal of state employees. *Mitchell v. King*, 537 F.2d 385 (10th Cir. 1976).

**Constitutionality of option feature.** — The option feature of the Personnel Act, granting to exempt officials the right to place their department or agency under the act, is merely enabling legislation and not an unconstitutional delegation of legislative power. 1961-62 Op. Att'y Gen. No. 62-79.

**Purposes underlying exemptions.** — The purposes underlying the exemption of certain classes of employees are not to preclude them from benefits such as vacation and sick leave. 1969 Op. Att'y Gen. No. 69-47.

**When exempt employees may come under act.** — A state agency not now included under the Personnel Act of 1961 may come under the act at any time that officials exempt from the Personnel Act elect to have their employees covered by the act. 1961-62 Op. Att'y Gen. No. 62-79.

**Certain positions exempt.** — The following departments, agencies, offices, etc., are exempt from the Personnel Act because they are either (1) not state positions within the meaning of the act or (2) they are not official state agencies within the meaning of the act: district judges, New Mexico historical society and probation officers. 1961-62 Op. Att'y Gen. No. 61-28.

**Associate museum directors exempt.** — The four associate directors of the museum of New Mexico are exempt from the Personnel Act under Subsection 4C. 1961-62 Op. Att'y Gen. No. 62-19.

**Judicial employees are specifically exempt from the Personnel Act.** 1969 Op. Att'y Gen. No. 69-47.

**Coverage of insurance department personnel.** — All insurance department personnel are covered under the Personnel Act except those, if any, who have been properly excluded under the provisions of this section. 1964 Op. Att'y Gen. No. 64-121.

**Classification of corrections division teachers.** — Teachers employed by the department of corrections (now corrections division) should be classified as state employees under the State Personnel Act. 1974 Op. Att'y Gen. No. 74-2.

**C.J.S. reference.** — 81A C.J.S. States § 86.

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### 10-9-5. Public officers and public employees; executive branch; annual exempt-salaries plan.

A. The department of finance and administration shall prepare, by May 1 of each odd-numbered year, an exempt-salaries plan for the governor's approval. The plan shall specify salary ranges for the following public-officer and public-employee positions of the executive branch of government:

- (1) members of boards and commissions appointed by the governor;
- (2) heads of agencies appointed by the governor;
- (3) heads of agencies appointed by the respective boards and commissions of the agencies;
- (4) employees in the governor's office;
- (5) positions in the state militia and the state police;
- (6) the assistants and secretaries in the offices of each official covered by Paragraphs (1), (2) and (3) of this section who are excluded from Personnel Act coverage by the provisions of Subsection I [Subsection K] of Section 10-9-4 NMSA 1978;
- (7) positions of a professional or scientific nature which are temporary in nature; and
- (8) state employees whose positions the personnel board has classified as policy-making positions, and exempt employees of elective public officials.

B. Excluded from the provisions of this section are employees of the state board of educational finance and employees of state educational institutions named in Article 12, Section 11 of the constitution of New Mexico.

C. Upon the governor's approval, the plan shall take effect at the beginning of the subsequent fiscal year.

History: 1953 Comp., § 5-4-31.1, enacted by Laws 1971, ch. 283, § 1; 1977, ch. 246, § 42; 1977, ch. 247, § 46; 1977, ch. 365, § 1.

1977 amendments. — Laws 1977, ch. 246, § 42, amending this section by combining Paragraphs (1) and (2) of Subsection B in a single paragraph, was approved April 7, 1977. Laws 1977, ch. 247, § 46, amending this section by inserting a new Paragraph (4) in Subsection A, redesignating Paragraphs (5) through (8) of Subsection A as (6) through (9) and substituting "Subsection K" for "Subsection I" in present Paragraph (6) of Subsection A, was also approved April 7, 1977. However, Laws 1977, ch. 365, § 1, amended this section by adding "the" at the beginning of Paragraph (6) of Subsection A, substituted "who are

excluded from Personnel Act coverage by the provisions of" for "excluding those positions covered by the Personnel Act according to" in Paragraph (6) of Subsection A and incorporated the changes made by the first 1977 amendment but not those of the second, and was approved April 8, 1977. The section is set out as amended by Laws 1977, ch. 365, § 1.

Personnel Act. — See 10-9-1 NMSA 1978 and notes thereto.

Board of educational finance administratively attached. — Laws 1977, ch. 246, § 49, administratively attaches the board of educational finance to the educational finance and cultural affairs department. See 21-1-28 NMSA 1978.

C.J.S. reference. — 67 C.J.S. Officers § 93.

### 10-9-6. Certified school instructors previously employed under the provisions of the Personnel Act.

Certified school instructors who were employed as certified school instructors by state institutions or state agencies under the provisions of the Personnel Act prior to July 1, 1974, may elect to continue to be employed under the Personnel Act. Certified school instructors who elect to continue under the Personnel Act shall file a notice of such election with the personnel director prior to the effective date of this act.

History: 1953 Comp., § 5-4-31.2, enacted by Laws 1975, ch. 182, § 2.

Effective date. — Laws 1975, ch. 182, § 3, makes the act effective on July 1, 1975.

Personnel Act. — See 10-9-1 NMSA 1978 and notes thereto.

### 10-9-7. Payment by covered agencies to the personnel board for services of state personnel office.

Each agency whose personnel are covered by the Personnel Act shall budget for and pay to the personnel board as directed by the department of finance and administration an



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assessment for the services furnished to the agency by the state personnel office. The assessment shall be a percentage of the agency's prior year expenditures for personal services and shall be in proportion to the total prior year expenditures for personal services of all covered employment. The state personnel office shall not spend any of such money for the promulgating or filing of rules, policies or plans which have significant financial impact, or which would require significant future appropriations to maintain, without prior, specific legislative approval.

History: 1953 Comp., § 5-4-31.3, enacted by Laws 1976, ch. 11, § 1.

Effective date. — Laws 1976, ch. 11, § 2, makes the act effective on July 1, 1976.

Personnel Act. — See 10-9-1 NMSA 1978 and notes thereto.

### 10-9-8. Personnel board; appointment.

The personnel board is created, and shall be composed of five members appointed by the governor, who shall serve staggered terms of five years each with one board member's term expiring each year. No person shall be a member of the board or eligible for appointment to the board who is an employee in the service, holds political office or is an officer of a political organization.

History: 1953 Comp., § 5-4-32, enacted by Laws 1961, ch. 240, § 5.

Meaning of "political office". — Under the theory advanced by a Kentucky court, any person who is elected by the voters to a public office would be deemed holding a political office within the intent of Laws 1961, ch. 240, §§ 5 and 15. This would be so even if the election were conducted along what is commonly

known as nonpartisan lines rather than political party lines. The term "political office" applies to every elected public office within the state including, but not limited to state elected positions, county elected positions and municipal elected positions, even if conducted along nonpartisan lines. 1961-62 Op. Att'y Gen. No. 61-53.

C.J.S. reference. — 67 C.J.S. Officers § 8.

### 10-9-9. Board members; pay; meetings.

Each board member shall be paid per diem and mileage according to the Per Diem and Mileage Act [10-8-1 to 10-8-7 NMSA 1978] when traveling on board business. The board shall meet at the call of the chairman but in the absence of such call, at least once every two months.

History: 1953 Comp., § 5-4-33, enacted by Laws 1961, ch. 240, § 6; 1967, ch. 181, § 2.

C.J.S. reference. — 67 C.J.S. Officers §§ 90, 91, 109.

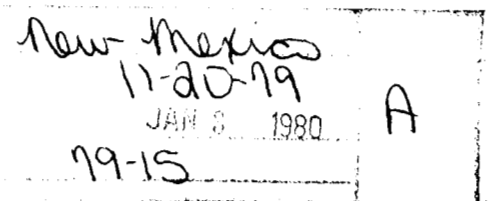
### 10-9-10. Board duties.

The board shall:

- A. promulgate regulations to effectuate the Personnel Act;
  - B. hear appeals and make recommendations to employers;
  - C. hire, with the approval of the governor, a director experienced in the field of personnel administration;
  - D. review budget requests prepared by the director for the operation of the personnel program and make appropriate recommendations thereon;
  - E. make investigations, studies and audits necessary to the proper administration of the Personnel Act;
  - F. make an annual report to the governor at the end of each fiscal year;
  - G. establish and maintain liaison with the department of finance and administration;
- and
- H. represent the public interest in the improvement of personnel administration in the system.

History: 1953 Comp., § 5-4-34, enacted by Laws 1961, ch. 240, § 7; 1963, ch. 200, § 3; 1967, ch. 181, § 3.

Cross-reference. — For Public Records Act, see 14-3-1 NMSA 1978 et seq.





**Personnel Act.** — See 10-9-1 NMSA 1978 and notes thereto.

**Effect of word "shall".** — The word "shall" in this section appears to place a mandatory duty upon the board to promulgate rules and regulations to effectuate the Personnel Act. 1963-64 Op. Att'y Gen. No. 64-22.

**Classification under rule-making authority.** — Under the rule-making authority of this section and

10-9-13 NMSA 1978 the state personnel board has a limited and restricted right to classify as confidential certain portions of an individual's personnel file which would not otherwise be made available to the state unless on a confidential or restricted basis. 1963-64 Op. Att'y Gen. No. 64-19.

**C.J.S. reference.** — 67 C.J.S. Officers § 110.

### 10-9-11. Board and office administratively attached to department of finance and administration.

The board and the state personnel office are administratively attached, as defined in the Executive Reorganization Act [9-1-1 to 9-1-10 NMSA 1978], to the department of finance and administration.

**History:** 1953 Comp., § 5-4-34.1, enacted by Laws 1977, ch. 247, § 47.

**Cross-reference.** — See 9-6-6 B NMSA 1978.

### 10-9-12. Director duties.

The director shall:

- A. supervise all administrative and technical personnel activities of the state;
- B. act as secretary to the board;
- C. establish, maintain and publish annually a roster of all employees of the state, showing for each employee his division, title, pay rate and other pertinent data;
- D. make annual reports to the board;
- E. recommend to the board rules he considers necessary or desirable to effectuate the Personnel Act; and
- F. supervise all tests and prepare lists of persons passing them to submit to prospective employers.

**History:** 1953 Comp., § 5-4-35, enacted by Laws 1961, ch. 240, § 8; 1967, ch. 181, § 4.

**Personnel Act.** — See 10-9-1 NMSA 1978 and notes thereto.

**C.J.S. reference.** — 67 C.J.S. Officers § 110.

### 10-9-13. Rules; adoption; coverage.

Rules promulgated by the board shall be effective when filed as required by law. The rules shall provide, among other things, for:

- A. a classification plan for all positions in the service;
- B. a pay plan for all positions in the service;
- C. competitive entrance and promotion tests to determine the qualifications, fitness and ability of applicants to perform the duties of the position for which they apply, and such rules shall also provide for the awarding to those applicants having a passing grade of one preference point for each year of consecutive residency in New Mexico, immediately prior to taking the test, not to exceed a total of five preference points;
- D. exemption from competitive entrance tests for those professional persons applying for classified positions in the service who possess recognized registration or certification by another state agency;
- E. a period of probation of one year during which a probationer may be discharged or demoted or returned to the eligible list without benefit of hearing;
- F. the establishment of employment lists for the certification of the highest standing candidates to the prospective employers, and procedure to be followed in hiring from the lists;
- G. hours of work, holidays and leave;

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H. dismissal or demotion procedure for employees in the service, including presentation of written notice stating specific reasons and time for the employees to reply thereto, in writing, and appeals to the board;

I. the rejection of applicants who fail to meet reasonable requirements as to age, physical condition, training, experience or moral conduct; and

J. employment of any apparently qualified applicant for a period of not more than ninety days when an emergency condition exists and there are no applicants available on an appropriate employment list as provided in Subsection F of this section. The applicant, if employed shall be paid at the same rate as a comparable position covered by the Personnel Act.

**History:** 1953 Comp., § 5-4-36, enacted by Laws 1961, ch. 240, § 9; 1963, ch. 200, § 4; 1967, ch. 181, § 5; 1975, ch. 26, § 1.

**Emergency clause.** — Laws 1975, ch. 26, § 2, makes the act effective immediately. Approved March 17, 1975.

**Personnel Act.** — See 10-9-1 NMSA 1978 and notes thereto.

**Generally, as to employment termination and pay.** — Terminal leave pay is available to involuntarily terminated employees at the discretion of the appointing authority. Terminal leave pay is available to voluntarily resigning employees as a matter of right. The only limitations upon the power of the appointing authority to dismiss are that notice must be given in writing to the dismissed employee and an authorized reason for dismissal must be stated therein. The only limitation on the right of the voluntarily resigning employee to terminal pay is the requirement that he must give 14 days' notice to the appointing authority. 1959-60 Op. Att'y Gen. No. 60-213.

**Physician dismissal by miners' hospital board.** — The miners' hospital board may dismiss a physician in their employment for not abiding by the rules and regulations of the hospital board, but the physician has the right to appeal the dismissal to the personnel board. 1964 Op. Att'y Gen. No. 64-130.

**Dismissal of employees.** — The miners' hospital board has power to remove or discharge any employee, but it must exercise this power in accordance with the rules promulgated by the personnel board. 1964 Op. Att'y Gen. No. 64-130.

**Right to board hearing.** — An employee covered by Personnel Act has a right to a personnel board hearing on his dismissal when the reason given for the dismissal is administrative change and a reduction in personnel. 1961-62 Op. Att'y Gen. No. 62-138.

**Requiring physical examination.** — The state personnel board has the authority to require a physical examination of all applicants for employment. 1963-64 Op. Att'y Gen. No. 64-22.

**Harmonization with other act.** — The Personnel Act can be harmonized with the provision in the General Appropriation Act that "insurance department

personnel shall have qualifications as established by the superintendent of insurance." 1964 Op. Att'y Gen. No. 64-121.

**Granting of overtime pay or time-off.** — There is no prohibition against the cattle sanitary board (now N.M. livestock board) paying its employees engaged in inspecting meat overtime pay or granting compensatory time-off for the extra hours worked. 1967 Op. Att'y Gen. No. 67-20.

**Generally, as to specific work hours.** — There is no requirement contained in the New Mexico constitution or statutes that work be done at any specific hours of the day. 1967 Op. Att'y Gen. No. 67-89.

**And eight-hour days.** — There is no specific requirement, either constitutional or statutory, requiring that employees of the state work an eight-hour day. 1967 Op. Att'y Gen. No. 67-89.

**Classification under rule-making authority.** — Under the rule-making authority of this section and 10-9-10 NMSA 1978, the state personnel board has a limited and restricted right to classify as confidential certain portions of an individual's personnel file which would not otherwise be made available to the state unless on a confidential or restricted basis. 1963-64 Op. Att'y Gen. No. 64-19.

**Salary matter of public record.** — An employee's salary, kept and published under this section, is a matter of public record under 14-2-1 NMSA 1978. 1968 Op. Att'y Gen. No. 68-110.

**So is test score and position.** — A job applicant's test score and position on an eligibility list under this section, possessed by the state personnel office, is a public record under 14-2-1 NMSA 1978. 1968 Op. Att'y Gen. No. 68-110.

**But not medical and employment histories.** — The medical history and employment history solicited from an applicant's previous employer, under this section, are not public records under 14-2-1 NMSA 1978. 1968 Op. Att'y Gen. No. 68-110.

**Law review.** — For note, "Public Labor Disputes — A Suggested Approach for New Mexico," see 1 N.M. L. Rev. 281 (1971).

**C.J.S. reference.** — 67 C.J.S. Officers § 110.

#### 10-9-14. Blind not barred from competitive examination; method of testing.

A. No agency or officer of the state or any of its political subdivisions shall prohibit, prevent, disqualify or discriminate against any blind person, otherwise qualified, from registering, taking or competing in a competitive entrance or promotion test for any position for which the blind person makes application.

B. The state personnel board and all political subdivisions of the state which require competitive or promotion tests for any position shall provide an adequate and equal test by an appropriate method for any blind person requesting such a test at the time of submitting his application.



History: 1953 Comp., § 5-4-36.1, enacted by Laws 1967, ch. 71, § 1.

Cross-references. — For agency, defined, see 10-9-3 NMSA 1978. For Handicapped Employment Act, see 28-10-9 NMSA 1978 et seq.

C.J.S. references. — 67 C.J.S. Officers §§ 11, 34; 81A C.J.S. States § 86.

### 10-9-15. Duties of state officers and employers.

All officers and employers of the state shall comply with the Personnel Act. All employers shall hire employees only from employment lists of applicants who meet prescribed minimum requirements and have passed the prescribed tests, provided by the director. All officers and employers shall furnish any records or information which the director or the board requests.

History: 1953 Comp., § 5-4-37, enacted by Laws 1961, ch. 240, § 10.

Cross-reference. — For definition of employer, see 10-9-3 NMSA 1978.

Personnel Act. — See 10-9-1 NMSA 1978 and notes thereto.

C.J.S. reference. — 67 C.J.S. Officers § 110.

### 10-9-16. Status of present employees.

All employees of the state holding positions brought into the classified service by the Personnel Act shall be continued in their positions and become regular employees without original examinations, if they have held the position for at least one year immediately prior to the effective date of the Personnel Act. All other employees of the state holding positions brought into the service by the Personnel Act shall be continued in their positions as probationers until they have, not later than one year from the effective date of the Personnel Act, taken and passed a qualifying test prescribed by the director for the position held. An employee who fails to qualify shall be dismissed within thirty days after the establishment of an employment or promotion list for his position. Nothing in the Personnel Act shall preclude the reclassification or reallocation of any position held by an incumbent.

This section shall not apply to employees of the grant-in-aid agencies whose status as employees or probationers shall be recognized under rules to be promulgated by the board.

History: 1953 Comp., § 5-4-38, enacted by Laws 1961, ch. 240, § 11.

Effective date. — Laws 1961, ch. 240, contains no effective date provision, but was enacted at a session which adjourned on March 11, 1961. See N.M. Const., art. XV, § 23.

Personnel Act. — See 10-9-1 NMSA 1978 and notes thereto.

C.J.S. reference. — 67 C.J.S. Officers § 34.

### 10-9-17. Certification of payroll.

No person shall make or approve payment for personnel services to any person in the service, unless the payroll voucher or account of the pay is certified by the director that the person being paid was employed in accordance with the Personnel Act.

History: 1953 Comp., § 5-4-39, enacted by Laws 1961, ch. 240, § 12.

Personnel Act. — See 10-9-1 NMSA 1978 and notes thereto.

C.J.S. references. — 67 C.J.S. Officers § 99; 81A C.J.S. States § 86.

### 10-9-18. Appeals by employees to the board.

Any employee who is dismissed or demoted, or who is suspended, may, within thirty days after the dismissal, demotion or suspension, appeal to the board. The appealing employee and the appointing authority whose action is reviewed have the right to be heard publicly and to present facts pertinent to the appeal. Any applicant denied permission to take an examination, or who is disqualified, may appeal to the board. Technical rules of evidence shall not apply. If the board finds the ground for the action is not substantiated, then it shall make written findings and recommendations to the employer, who shall reinstate,



within thirty days after notice, the employee, with pay, from the date of suspension, demotion or discharge. Any decision made by the board is final. The board may designate a hearing officer who may be a member of the board or any qualified state employee to preside over and take evidence at any hearing held pursuant to this section.

History: 1953 Comp., § 5-4-40, enacted by Laws 1961, ch. 240, § 13; 1963, ch. 200, § 5; 1973, ch. 66, § 1; 1975, ch. 5, § 1.

C.J.S. reference. — 67 C.J.S. Officers §§ 58-72.

#### 10-9-19. Reduction in force.

Whenever an employee is terminated by an employer in a reduction in force by the employer, the terminated employee shall be rehired by that employer if the same or a comparable position becomes available in an increase of force within six months after the termination.

History: 1953 Comp., § 5-4-40.1, enacted by Laws 1963, ch. 200, § 7.

C.J.S. reference. — 67 C.J.S. Officers §§ 49, 62.

Emergency clause. — Laws 1963, ch. 200, § 8, makes the act effective immediately. Approved March 19, 1963.

#### 10-9-20. Oaths; testimony; records; refusal.

The board has the power to administer oaths, subpoena witnesses and compel the production of books and papers pertinent to any investigation or hearing authorized by the Personnel Act. Refusal to testify before the board on matters pertaining to personnel is grounds for dismissal from the service.

History: 1953 Comp., § 5-4-41, enacted by Laws 1961, ch. 240, § 14.

C.J.S. reference. — 67 C.J.S. Officers § 107.

Personnel Act. — See 10-9-1 NMSA 1978 and notes thereto.

#### 10-9-21. Prohibited acts.

A. No employer shall dismiss an employee for failure or refusal to pay or promise to pay any assessment, subscription or contribution to any political organization or candidate; however, nothing herein contained shall prevent voluntary contributions to political organizations.

B. No person in the personnel office, or employee in the service, shall hold political office or be an officer of a political organization during his employment. For the purposes of the Personnel Act, being a member of a local school board shall not be construed to be holding political office, and being an election official shall not be construed to be either holding political office, or being an officer of a political organization. Nothing in the Personnel Act shall deny employees the right to vote as they choose or to express their opinions on political subjects and candidates.

C. Any employee who becomes a candidate for public office must, upon filing or accepting the nomination and during the campaign, take a leave of absence. This subsection does not apply to those employees of a grant-in-aid agency, whose political activities are governed by federal statute.

D. The director shall investigate any written charge by any person, that this section has been violated and take whatever steps deemed necessary.

E. No person shall be refused the right of taking an examination, or from appointment to a position, from promotion or from holding a position, because of political or religious opinions or affiliation, or because of race or color.

F. No employee or probationer shall engage in partisan political activity while on duty.

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G. With respect to employees of federal grant-in-aid agencies, the applicable personnel standards, regulations and federal laws limiting activities shall apply and shall be set forth in rules promulgated by the board.

**History:** 1953 Comp., § 5-4-42, enacted by Laws 1961, ch. 240, § 15; 1963, ch. 200, § 6; 1967, ch. 181, § 6.

**Cross-reference.** — For definition of incompatible office, see 10-6-5 NMSA 1978.

**Personnel Act.** — See 10-9-1 NMSA 1978 and notes thereto.

**Constitutionality.** — Subsection B does not violate the first amendment guarantee of freedom of speech in requiring that certain state employees not hold public office, nor does it deny equal protection by exempting some state employees from its provisions. State ex rel. Gonzales v. Manzagol, 87 N.M. 230, 531 P.2d 1203 (1975).

**Legislative power.** — The legislature had the constitutional power under N.M. Const., art. VII, § 2B, to enact this section and to thereby provide, as a qualification or standard for continued employment by the state in a position covered by the State Personnel Act, that the employee not hold "political office." State ex rel. Gonzales v. Manzagol, 87 N.M. 230, 531 P.2d 1203 (1975).

**Phrase "while on duty"** as used in the Personnel Act means to be actually on the job. 1961-62 Op. Att'y Gen. No. 62-116.

**Scope of prohibition in Subsection B.** — The words "be an officer of a political organization" are relatively clear. The prohibition (in Subsection B) is without restriction and the legislative intent of these words applies with equal force to the highest and lowest office in a political party or organization. Since there is no restriction, all officers of the party or organization are included within the prohibition, from the state chairman to membership in the central committee or executive committee on down the line to precinct officers and division officers. 1961-62 Op. Att'y Gen. No. 61-53.

**Effect of election to public office.** — Under the theory advanced by a Kentucky court, any person who is elected by the voters to a public office would be deemed holding a political office within the intent of Laws 1961, ch. 240, §§ 5 and 15. This would be so even

if the election were conducted along what is commonly known as nonpartisan lines rather than political party lines. The term "political office" applies to every elected public office within the state including, but not limited to state elected positions, county elected positions and municipal elected positions, even if conducted along nonpartisan lines (decided prior to 1963 amendment). 1961-62 Op. Att'y Gen. No. 61-53.

**Example of political office.** — The office of city councilman clearly falls within the definition of a "political office" and petitioner who held such office could properly be discharged from his classified state job under this section. State ex rel. Gonzales v. Manzagol, 87 N.M. 230, 531 P.2d 1203 (1975).

**When political activity permissible.** — A state employee covered by the Personnel Act may engage in political activity while on annual leave, on week-ends and after working hours during the work week. 1961-62 Op. Att'y Gen. No. 62-116.

**Effect of section on municipal election judges or clerks.** — Municipal election judges or clerks are not holders of public office under the prohibition of the Personnel Act. 1961-62 Op. Att'y Gen. No. 62-37.

**On candidate for delegate to constitutional convention.** — A candidate for the position of delegate to the constitutional convention, which is both a temporary and occasional position, is not a candidate for "public office" and need not take a leave of absence. 1969 Op. Att'y Gen. No. 69-28.

**On the delegate.** — The position of delegate to a constitutional convention is not a "political office" within the meaning of Subsections B or C of this section. 1969 Op. Att'y Gen. No. 69-28.

**Generally, as to delegates.** — There is no fundamental inconsistency between the positions of public employee covered by the State Personnel Act and that of delegate to the constitutional convention. 1969 Op. Att'y Gen. No. 69-28.

**C.J.S. reference.** — 67 C.J.S. Officers §§ 54(1), 60, 62, 66.

## 10-9-22. Unlawful acts prohibited.

It is unlawful to:

A. make any false statement, certificate, mark or rating with regard to any test, certification or appointment made under the Personnel Act;

B. directly or indirectly give, pay, offer, solicit or accept any money or other valuable consideration or secure or furnish any special or secret information for the purpose of affecting the rights or prospects of any person with respect to employment in the service.

**History:** 1953 Comp., § 5-4-43, enacted by Laws 1961, ch. 240, § 16.

**Personnel Act.** — See 10-9-1 NMSA 1978 and notes thereto.

**C.J.S. reference.** — 67 C.J.S. Officers §§ 60, 62.

## 10-9-23. Penalties.

Any person willfully violating any provision of the Personnel Act or the rules of the board is guilty of a misdemeanor. In addition to the criminal penalties, a person found guilty of a misdemeanor under the Personnel Act is ineligible for appointment to or employment in a position in the service, and forfeits his office or position.



History: 1953 Comp., § 5-4-44, enacted by Laws 1961, ch. 240, § 17.  
Personnel Act. — See 10-9-1 NMSA 1978 and notes thereto.

C.J.S. reference. — 67 C.J.S. Officers §§ 125 to 134.

#### 10-9-24. Existing rules.

Existing personnel rules, policies and pay plans for employees of the state shall govern until new rules, policies and pay plans are established under the Personnel Act.

History: 1953 Comp., § 5-4-45, enacted by Laws 1961, ch. 240, § 18.

Personnel Act. — See 10-9-1 NMSA 1978 and notes thereto.

#### 10-9-25. Federal funds and assistance.

When the provisions of any laws of the United States, or any rule, order, or regulation of any federal agency or authority providing federal funds for use in New Mexico, either directly or indirectly or as a grant-in-aid, to be matched or otherwise, impose as a condition for the receipt of such funds, other or higher personnel standards or different classifications than are provided for by the Personnel Act, the board has the authority and is directed to adopt rules and regulations to meet the requirements of such law, rule, order or regulation.

History: 1953 Comp., § 5-4-46, enacted by Laws 1961, ch. 240, § 19.

Separability clause. — Laws 1961, ch. 240, § 20, provides for the severability of the act if any part or application thereof is held invalid.

Repealing clause. — Laws 1961, ch. 240, § 21, repeals 5-4-2, 5-4-18 to 5-4-27, and 42-1-63 to 42-1-73, 1953 Comp.

Personnel Act. — See 10-9-1 NMSA 1978 and notes thereto.

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